No. 588

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM — 1939

NATIONAL LABOR RELATIONS BOARD, Petitioner,

v.

BRADFORD DYEING ASSOCIATION (U. S. A.)

BRIEF OF

B. D. A. Employees Federation, Local Union No. Sixteen, Branch of the Associated Workers of Printing, Finishing and Allied Industries, Intervener

In Opposition to Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit

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OPINIONS BELOW

The opinion below, the original findings of fact, conclusions of law and order of the National Labor Relations Board, and the supplemental findings of fact and recommendation of the Board are stated in the petition.

ARGUMENT

The opinion of the Court below does not hold that the Board's findings as reviewed in the petition (pages 5 - 9, inclusive) were supported by substantial evidence. A brief summary of the evidence with respect to the formation and administration of B. D. A. Employees Federation, herein called the "Federation," is as follows:

The Federation on April 6, 1937, elected temporary officers (R 216). On April 9, 1937, 484 employees of the 753 employees of the respondent eligible for membership joined the Federation as evidenced by signed membership cards (R 428), at which time the Federation, in writing, informed the respondent's president that a majority of the employees had joined the Federation, furnished evidence thereof, and requested that the Federation be recognized as the sole bargaining agent of the respondent's employees with respect to wages, hours of labor and general working conditions (R 224-226; Ex. 39, R 561-568; Ex. 21, R 515). On the same day the respondent, in writing, granted to the Federation recognition as sole bargaining agent of its employees with respect to wages, hours of labor and general working conditions (R 224-225, Ex. 23, R 516).

At a mass meeting of the Federation held in the Town Hall, Westerly, Rhode Island, on April 11, 1937, officers and an executive committee were elected by secret ballot (R 222-223), also a grievance committee (R 243-244), and by-laws were adopted (R 231).

On April 20, 1937, the Federation negotiated with the Associated Workers of Printing, Finishing and Allied Industries, a national labor organization, for a charter (R 231), and on April 23, 1937, the Federation voted to apply for a charter (R 230). On May 22, 1937, a charter was granted

to Local Union No. Sixteen, to be known as the B. D. A. Employees Federation Branch of Associated Workers of Printing, Finishing and Allied Industries.

After April 11, 1937, meetings of members were held monthly in the Town Hall or Calabrian Hall (R 232-233), the grievance committee was active in conferring and negotiating with the respondent with respect to wage rates and conditions of employment (R 265-275), initiation fees and weekly dues were paid (Ex. 45, R. 570), the executive committee met regularly in a building rented by the Bradford Social Club (R 233, 239).

When, on April 23, 1937, the employees of the respondent who had originally signed Federation membership cards, forming the Federation, again over their respective signatures selected the Associated Workers of Printing, Finishing and Allied Industries, with locals in various states, as their bargaining agent and were granted a charter by the Associated Workers of Printing, Finishing and Allied Industries with the designation of Local No. Sixteen, to be known as the B. D. A. Employees Federation Branch of Associated Workers of Printing, Finishing and Allied Industries (Ex. 25, R 525; Ex. 44, R 569; R 639), there came into being a definitely new alignment of employee membership with an enrollment of 502 (R 488, Ex. 39, R 561) in a national labor union as compared with an enrollment of 484 that had composed the earlier organization of the Federation (Ex. 39, R 561). The Board ignored this uncontradicted evidence in its findings. There is no evidence in the record that the respondent dominated or interfered with the formation and administration of the newly selected Local No. Sixteen of the Associated Workers of Printing, Finishing and Allied Industries, or that the respondent coerced its employees to affiliate with said labor organization. The intervener contends that the employees who were members of the Federation could form or select a new organization to rep-

resent them. In the instant case they selected the Associated Workers of Printing, Finishing and Allied Industries.

At no time prior to April 13, 1937 was the respondent requested to bargain collectively with C. I. O. On the evening of April 13, 1937, Joseph Salerno, Director of the T. W. O. C. for Rhode Island, conferred with Summersby in Salerno's room at the Providence Biltmore Hotel, at the request of J. L. Bernard, labor conciliator. At that conference Salerno requested a T. W. O. C. contract. He was informed by Summersby that the respondent had entered into an agreement to bargain collectively with the Federation which had a majority of the employees enrolled (R 452-455). There was no local of the T. W. O. C. at the plant of the respondent, no dues had been paid, no officers elected, and no employees were functioning as a local of the T. W. O. C. (R 116).

The petitioner claims (page 8 of the petition) that as early as April 2, 1937, respondent knew that T. W. O. C. had signed up a majority of the employees. This claim ignores the uncontradicted evidence. The only evidence with respect to such claim appearing in the record is that one employee said to another employee on April 2, 1937, "We have well over 60% signed up already" (R 135). The respondent was not informed that T. W. O. C. claimed such a majority of the employees until April 13 (R 454-455). The respondent had already entered into an agreement to bargain collectively with the Federation.

The petitioner further claims (page 8 of the petition) that at all times after April 4, 1937, respondent, although requested, refused to bargain collectively with the T. W. O. C. No reference is made to such evidence in the record for there is no such evidence. The first occasion on which the respondent was informed that T. W. O. C. claimed to have a majority and was requested to bargain collectively with T. W. O. C. was on April 13 at which time Summersby

stated to Salerno that the respondent had an agreement to bargain collectively with the Federation (R 454-455).

The respondent, not having been informed that any organization, other than the Federation, on April 9, 1937, claimed a majority, or no request having been made to bargain collectively by any other organization, there was no duty imposed upon the respondent under the act, other than to bargain with the Federation.

This Court has said:

> "In the normal course of transactions between them, willingness of the employees is evidenced by their request, invitation, or expressed desire to bargain, communicated to the employer. * * * * To put the employer in default here the employees must at least have signified to respondent their desire to negotiate." National Labor Relations Board v. Columbia Enameling & Stamping Co., Inc., 83 Law. Ed. 483.

The petitioner assigns as a reason for granting the writ that the court below did not disturb the Board's finding that respondent had dominated and interfered with the formation and administration of the Federation, and had coerced employees to join it. Inasmuch as the court below did not vacate that part of the Board's order wherein the respondent was ordered to withdraw all recognition from the Federation and upon request bargain collectively with T. W. O. C. (R 664), it must be concluded that the court below did not find that there was substantial evidence to support the finding that the respondent had dominated and interfered with the formation and administration of the Federation and had coerced employees to join it. It is submitted that the court below did not err in so finding.

The court did not err in holding "that it does not appear by clear and substantial evidence that a majority of the

employees ever joined or indicated an intention to join the T. W. O. C." (R 688). The C. I. O. cards stated: "I hereby pledge to become a member of an affiliated union of the C. I. O." No dues were to be paid "until such time as the workers in my plant or department are organized to the extent of at least 60%" (R 261). This was not a designation of the T. W. O. C. as the bargaining agent of the employees. The employees signing such cards did not organize an affiliated union (R 111).

CONCLUSION

The Federation was the free choice of the employees. The court did not substitute its judgment for that of the Board nor are its holdings in conflict with the decisions of this court cited by the petitioner. We therefore respectfully submit that the petition for a writ of certiorari be denied.

JOHN FERGUSON,
Attorney for B. D. A. Employees Federation, Intervener.

January, 1940.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C., Supp IV, Title 29, sec. 151 *et seq.*) are as follows:

Section 1 * * *

"It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

"Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

"Section 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; * * *

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

"Section 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

* * * * * *

"Section 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice, (listed in Section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

* * * * * *

(e) The Board shall have power to petition any Circuit Court of Appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the Circuit Courts of Appeals to which application may be made are in vacation, any District Court of the United States (including the Supreme Court of

the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate Circuit Court of Appeals if application was made to the District Court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in Sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, Secs. 346 and 347)."